

² The Board notes that following the August 20, 2021 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether OWCP properly found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On February 19, 2020 appellant, then a 59-year-old physician assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 18, 2020 she fell to the floor and injured her buttocks, spine, right knee, and left elbow when a chair she was attempting to sit in rolled back while in the performance of duty. OWCP accepted the claim for sprain of left shoulder joint, as well as sprains of ligaments of the cervical, thoracic, and lumbar areas of the spine. It paid appellant wage-loss compensation on the supplemental rolls from May 26 through December 5, 2020, and on the periodic rolls, commencing December 6, 2020.

Appellant returned to work on February 8, 2021. An OWCP field nurse confirmed that appellant returned to full-duty work for six hours per day on February 8, 2021. Appellant worked six-hour days for the first two weeks and then progressed to full eight-hour days on February 22, 2021.

On February 23, 2021 OWCP received a claim for compensation (Form CA-7) for disability from work from February 8 through 12, 2021. In an accompanying time analysis form (Form CA-7a), appellant noted that on February 8, 10, and 12, 2021 she worked four hours and used four hours of leave without pay (LWOP); and that on February 9 and 11, 2021 she worked six hours and used two hours of LWOP.

OWCP's compensation payment records reflect that on February 27, 2021 OWCP paid appellant wage-loss compensation for total disability on the periodic rolls in the net amount of \$6,482.38 for the period January 31 through February 27, 2021; however, no check number accompanying this payment was reported by OWCP in its record.

On March 18, 2021 OWCP received an additional Form CA-7, on which appellant claimed compensation for intermittent disability for the period March 3 through 12, 2021. On an accompanying Form CA-7a appellant noted that she had worked six hours a day on March 3, 5, 8, 10, 12 and used two hours each day of LWOP. She also noted that she worked 5.75 hours on March 9, 2021 and had used 2.25 hours of LWOP. On March 27, 2021 OWCP paid appellant wage-loss compensation for total disability on the periodic rolls in the net amount of \$6,578.33 for the period February 28 through March 27, 2021; however, the payment records indicate that this rolls payment was cancelled.

OWCP paid appellant on the supplemental rolls again, commencing March 28, 2021.

On a compensation termination worksheet dated April 5, 2021 OWCP indicated that from February 8 through 27, 2021 appellant received net amount of \$4,630.27; from February 28 through March 27, 2021, she received a net amount of \$6,482.38; and from March 1 through 27, 2021, she received a net amount of \$95.95. It calculated an overpayment of compensation in the amount of \$11,208.60, noting that appellant returned to work for six hours per day on February 8, 2021.

On April 6, 2021 appellant filed a Form CA-7, claiming compensation for leave without pay from March 15 through 18, 2021. On an accompanying April 5, 2021 Form CA-7a, she

claimed compensation for 2.25 hours of LWOP on March 15 and 17, 2021, noting she worked 5.75 hours on those days; she claimed 4 hours of LWOP pay for March 18, 2021.

On April 15, 2021 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$11,208.60,³ for the period February 8 through March 27, 2021, because she returned to work on February 8, 2021, but continued to receive wage-loss compensation for total disability through March 27, 2021. It noted that she received a paper compensation check with the printed date of payment and found that she reasonably should have known that the payment was incorrect because the dates overlapped with a period when she worked. OWCP further notified her of its preliminary determination that she was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect. Additionally, it provided appellant with an overpayment action request form and informed her that within 30 days she could request a telephonic conference, a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that she complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses.

By check dated April 25, 2021 in the amount of \$4,138.83, appellant partially repaid the debt.

On May 10, 2021 OWCP received appellant's completed Form OWCP-20. Appellant noted that OWCP was responsible for the overpayment because she, herself, as well as OWCP's nurse assigned to her claim had notified OWCP that she had returned to work. She did not provide any financial information and in response to whether she had any of the incorrectly paid checks, she indicated that she had \$7,069.86.

By decision dated August 20, 2021, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$11,208.60, for the period February 8 through March 27, 2021, because she continued to receive wage-loss compensation after returning to work. It noted that it had already received \$4,138.83 in repayment, and there was no evidence to indicate that appellant was financially unable to repay the balance of the debt in full. OWCP required recovery of the balance of the overpayment in the amount of \$7,069.77 in full by personal check or money order. It explained that appellant was at fault in the creation of the overpayment because she received a payment that she reasonably should have known was incorrect.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴ Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by

³ The Board notes that the amount was listed in the preliminary overpayment determination as \$11,208.69; however, the accompanying overpayment calculation reflected a total overpayment in the amount of \$11,208.60.

⁴ *Supra* note 1 at § 8102(a).

decreasing later payments to which an individual is entitled.⁵ A claimant is not entitled to receive disability benefits and actual earnings for the same time period.⁶ OWCP procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP has established that appellant received an overpayment of compensation.

The case record establishes that OWCP continued to pay appellant wage-loss compensation for total disability, after she returned to work. As noted above, a claimant is not entitled to receive compensation for disability during a period in which he or she had actual earnings.⁸ Therefore, the Board finds that the fact of overpayment has been established in this case.

The Board further finds, however, that this case is not in posture for decision with regard to the period and amount of the overpayment.

OWCP's compensation payment records reflect that on February 27, 2021 OWCP paid appellant wage-loss compensation for total disability on the periodic rolls in the net amount of \$6,482.38 for the period January 31 through February 27, 2021; however, no check number accompanying this payment was reported by OWCP in its record. On March 27, 2021 OWCP paid appellant wage-loss compensation for total disability on the periodic rolls in the net amount of \$6,578.33 for the period February 28 through March 27, 2021; however, the payment records indicate that this payment was cancelled. On a compensation termination worksheet dated April 5, 2021 OWCP indicated that from February 8 through 27, 2021, appellant received net amount of \$4,630.27; from February 28 through March 27, 2001, she received a net amount of \$6,482.38; and from March 1 through 27, 2021, she received a net amount of \$95.95. It calculated an overpayment of compensation in the amount of \$11,208.60, noting that appellant returned to work for six hours per day on February 8, 2021, which was consistent with the information provided by an employing establishment nurse. The Form CA-7s of record, however, indicate that appellant intermittently worked either six hours per day or four hours per day throughout the claimed period.

The Board, therefore, finds that OWCP has not adequately explained how the overpayment was determined in light of the above-noted discrepancies in the determination of the overpayment period and amount. The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was

⁵ *Id.* at § 8129(a).

⁶ *See D.D.*, Docket No. 20-1172 (issued September 28, 2021); *M.C.*, Docket No. 19-1263 (issued March 5, 2020); *K.K.*, Docket No. 19-0978 (issued October 21, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *L.S.*, 59 ECAB 350, 352-53 (2008).

⁷ *L.C.*, Docket No. 20-1058 (issued June 21, 2021); *A.H.*, Docket No. 20-0442 (issued January 26, 2021); *L.H.*, Docket No. 20-0115 (issued September 4, 2020); *C.A.*, Docket No. 18-0092 (issued April 2, 2018); *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Action*, Chapter 6.200.1 (September 2018).

⁸ *Id.*

calculated.⁹ Accordingly, the case must be remanded to OWCP to explain its calculations of the overpayment. It should then issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting documentation. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds that OWCP properly determined that an overpayment of compensation was created. The Board further finds, however, that the case is not in posture for decision regarding the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 13, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁹ See *J.V.*, Docket No. 20-0952 (issued February 2, 2022); *S.H.*, Docket No. 20-1189 (issued January 27, 2021); *Teresa A. Ripley*, 56 ECAB 528 (2005).

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.